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Before the  
Federal Communications Commission  
Washington, D.C. 20554

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APR 14 2006

FCC Mail Room

In the Matter of )  
)  
Amendment of Section 73.202(b) ) MB Docket No. 05-133  
Table of Allotments, ) RM-11206  
FM Broadcast Stations. )  
(Abilene and Burlingame, Kansas) )

**REPORT AND ORDER**  
**(Proceeding Terminated)****Adopted: April 12, 2006****Released: April 14, 2006**

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division considers herein the *Notice of Proposed Rule Making* ("Notice"),<sup>1</sup> issued at the request of MCC Radio, LLC ("Petitioner"), licensee of Station KSAJ(FM), Channel 253C1, Abilene, Kansas. Petitioner filed comments. No counterproposals or other comments were received in response to this proceeding.

2. **Background.** The *Notice* proposed the reallocation of Channel 253C1 from Abilene to Burlingame, Kansas, as its first local service and modification of the Station KSAJ(FM) license accordingly.<sup>2</sup> Petitioner filed comments, reiterating its expression of interest in the reallocation of Station KSAJ(FM) to Burlingame, Kansas.

3. **Discussion.** Petitioner filed its request pursuant to Section 1.420(i) of the Commission's rules, which permits the modification of a station's license to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest in the proposed reallocation.<sup>3</sup> The proposed reallocation of Channel 253C1 at Burlingame is mutually exclusive with the current authorized facilities of Station KSAJ(FM), Channel 253C1, Abilene, Kansas.

4. When considering a reallocation proposal, a comparison is made between the existing allotment and the proposed allotment to determine whether the reallocation would result in a preferential arrangement of allotments based upon the FM Allotment priorities.<sup>4</sup> The proposed reallocation of

<sup>1</sup> See *Abilene and Burlingame, Kansas*, Notice of Proposed Rule Making, 20 FCC Rcd 6244 (MB 2005).

<sup>2</sup> As stated in the *Notice*, Burlingame is an incorporated city located in Osage County with a 2000 U.S. Census population of 1,017 persons. Burlingame has its own city council, consisting of an elected mayor and five elected council members, city clerks, animal control officer, city and court attorney, court clerk. Burlingame also has its own zip code, post office, commercial establishments, health facilities, civic organizations, fire and police departments, public works, public library, municipal court, zoning commission, school district and newspaper, the *Osage County Chronicle*.

<sup>3</sup> See *Modification of FM and TV Authorizations to Specify a New Community of License*, Report and Order, 4 FCC Rcd 4870 (1989), recon. granted in part, Memorandum Opinion and Order, 5 FCC Rcd 7394 (1990).

<sup>4</sup> The FM Allotment priorities are (1) First full-time aural service. (2) Second full-time aural service. (3) First local service. (4) Other public interest matters. [Co-equal weight is given to priorities (2) and (3)], See *Revision of FM Assignment Policies and Procedures*, Second Report and Order, 90 FCC 2d 88, 91 (1988).

Channel 253C1 to Burlingame would provide a first local service, priority (3), whereas the retention of Station KSAJ(FM) at Abilene would attribute to a second local service, priority (4).<sup>5</sup> As such, the reallocation proposal results in a preferential arrangement of allotments based on priority (3), first local service.

5. Accordingly, we are reallocating Channel 253C1 from Abilene to Burlingame, Kansas, as its first local aural transmission service and modifying the Station KSAJ (FM) license to reflect this change.<sup>6</sup> Channel 253C1 can be allotted to Burlingame in conformity with the Commission's rules, provided there is a site restriction of 17.7 kilometers (11 miles) northwest of the community, using reference coordinates 38-52-29 NL and 95-58-05 WL.

6. The Burlingame reallocation results in a net gain of 228,141 persons, while the loss area contains 165,609 persons. No white or gray areas will be created. However, the loss area will contain 135 persons receiving only four full-time reception services, 3 persons receiving only three full-time reception services and 67 persons receiving only two full-time reception services,<sup>7</sup> whereas the gain area currently contains 476 persons receiving only four full-time reception services, 2 persons receiving only three full-time services and 740 persons receiving only two full-time reception services. The remainder of the gain and loss areas will continue to be well served by five or more transmission services.

7. The Channel 253C1 facility at Burlingame covers 100 percent of the Topeka, Kansas Urbanized Area, while the existing Channel 253C1 at Abilene does not cover any part of any urbanized area.<sup>8</sup> As stated in the *Notice*, Petitioner has submitted a *Tuck* showing demonstrating that Burlingame warrants a first local preference. Therefore, we conclude that Burlingame is not dependent upon the Topeka Urbanized Area.

8. The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. § 801(a)(1)(A).

9. Accordingly, pursuant to the authority found in 47 U.S.C. Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) and 47 C.F.R. Sections 0.61, 0.204(b) and 0.283, IT IS ORDERED, That effective May 30, 2006, the FM Table of Allotments, 47 C.F.R. Section 73.202(b), IS AMENDED, with respect to the communities listed below, to read as follows:

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<sup>5</sup> "Unlimited" AM Station KABI is currently licensed to Abilene.

<sup>6</sup> Channel 253C1 can be allotted to Burlingame in conformity with the Commission's rules, provided there is a site restriction of 17.7 kilometers (11 miles) northwest of the community, using reference coordinates 38-52-29 NL and 95-58-05 WL.

<sup>7</sup> This small percentage of under-served persons in the loss area resulting from the Burlingame reallocation is consistent with Commission precedent. See *Shawnee and Topeka, Kansas*, Report and Order, 19 FCC Rcd 931 (MB 2004), and *Park City, Montana*, Report and Order, 19 FCC Rcd 2092 (MB 2004).

<sup>8</sup> In this regard, we are concerned with the potential migration of stations from lesser-served rural areas to well-served urban areas. For this reason, we will not blindly apply a first local service preference when a station seeks to reallocate its channel to a suburban community in or near an Urbanized Area. In making this determination, we apply existing precedent. See *Huntington Broadcasting Co. v. FCC*, 192 F. 2d 33 (D.C. Cir. 1951); *RKO General, Inc.*, Memorandum Opinion and Order, 5 FCC Rcd 3222 (1990); *Faye and Richard Tuck, Inc.*, Memorandum Opinion and Order, 3 FCC Rcd 5374 (1998) ("*Tuck*"). In essence, we consider the extent the station will provide service to the entire Urbanized Area, the relative populations of the suburban and central city, and, most importantly, independence of the suburban community.

| <u>Communities</u> | <u>Channel No.</u> |
|--------------------|--------------------|
| Abilene, Kansas    | -----              |
| Burlingame, Kansas | 253C1              |

10. IT IS FURTHER ORDERED, That pursuant to 47 U.S.C. Section 316(a) that the authorization of MCC Radio, LLC. for Station KSAJ(FM), Channel 253C1, Abilene, Kansas IS MODIFIED to specify operation on Channel 253C1 at Burlingame, Kansas, subject to the following conditions:

- (a) Within 90 days of the effective date of the *Order*, the licensee of Station KSAJ(FM) shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;
- (b) Upon grant of the construction permit, program tests may be conducted in accordance with 47 C.F.R. Section 73.1620; and
- (c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to 47 C.F.R. Section 1.1307, unless the proposed facilities are categorically excluded from environmental processing.

11. Pursuant to 47 C.F.R. Sections 1.1104(1)(k) and (3)(l) of the Commission's rules, MCC Radio, LLC, licensee of Station KSAJ(FM), Channel 253C1, Abilene, Kansas is required to submit a rulemaking fee in addition to the fee required for the application to effectuate the community of license for Station KSAJ(FM) to specify operation on Channel 253C1 at Burlingame, Kansas at the time its Form 301 application is submitted.

12. IS FURTHER ORDERED, That the aforementioned proceeding IS TERMINATED.

13. For further information concerning this proceeding, contact Rolanda F. Smith, Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos  
Assistant Chief  
Audio Division  
Media Bureau